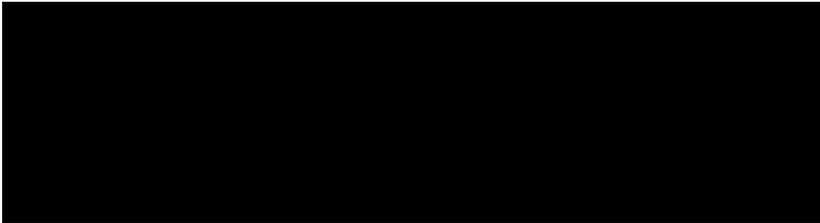


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prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
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Services**

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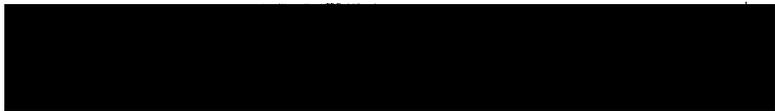


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FILE: WAC 04 023 52957 Office: CALIFORNIA SERVICE CENTER Date:

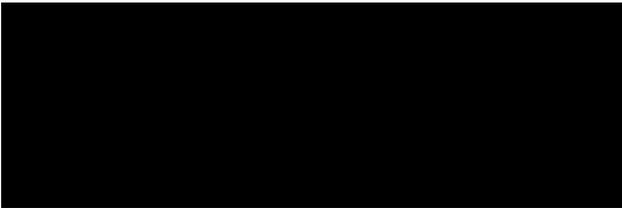
**DEC 02 2005**

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. An appeal was filed, which was rejected by the Administrative Appeals Office (AAO) as not timely filed. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a financial services provider. It seeks to employ the beneficiary as a market researcher and to extend his classification as a nonimmigrant worker in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on December 4, 2003, for failure of the petitioner to submit requested evidence. As provided in 8 C.F.R. § 103.3(a)(2)(i), an appeal together with the fee specified in 8 C.F.R. § 103.7 must be filed “with the office where the unfavorable decision was made” within 30 days of the date the decision was served. Three additional days are allowed for an appeal if the notice of decision was served by mail. *See* 8 C.F.R. § 103.5a(b). Since the notice of decision was mailed to the petitioner in this case, a 33-day appeal period applies. If the last day of the appeal period falls on a weekend or a holiday, the deadline is extended until the next working day. *See* 8 C.F.R. § 1.1(h).

Under the regulations, therefore, the filing deadline for an appeal was Tuesday, January 6, 2004 – 33 days after the decision was served by mail. Counsel submitted an appeal (Form I-290B) that was initially received by the service center on January 5, 2004. The following day the service center sent counsel a rejection notice (Form I-797C), advising that the appeal could not be accepted because it had not been properly signed. Counsel resubmitted the appeal with the required signature, which was received by the service center on January 9, 2004.

An appeal – like petitions, motions, and other requests submitted to Citizenship and Immigration Services (CIS) – is regarded as properly filed when stamped by the receiving office, “if it is signed and executed and the required filing fee is attached.” 8 C.F.R. § 103.2(a)(7). Improperly filed appeals “shall be rejected . . . [and] . . . will not retain a filing date.” *Id.* Since the required signature was not submitted by counsel until January 9, 2004, the petitioner’s appeal was not properly filed until that date, which was three days after the deadline of January 6, 2004. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that “[a]n appeal which is not filed within the time allowed must be rejected as improperly filed.”

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO. On August 4, 2004 the AAO rejected the appeal as not timely filed.

Counsel filed a timely motion to reopen or reconsider. Motions to reopen or reconsider are governed by regulations at 8 C.F.R. § 103.5. As provided in 8 C.F.R. § 103.5(a)(1)(i), “when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.” The requirements of a motion to reopen are specified in 8 C.F.R. § 103.5(a)(2):

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The requirements of a motion to reconsider are specified in 8 C.F.R. § 103.5(a)(3):

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [U.S. Citizenship and Immigration Services] policy. A motion to reconsider . . . must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In support of the motion counsel resubmitted copies of the correspondence it exchanged with the service center relating to its initial improper filing and subsequent late filing of the appeal in January 2004. Counsel did not state any new facts in its motion. Moreover, the documentary evidence submitted was already part of the record and provided no new information. Thus, counsel's submissions do not satisfy the requirements of a motion to reopen.

Counsel argues that CIS has the discretion to deem the appeal as timely filed if the petitioner can demonstrate that the delay was reasonable and beyond its control, citing the regulation at 8 C.F.R. § 103.5(a)(1)(i). Counsel's argument is inapposite. The cited regulation applies to motions to reopen that are not filed within 30 days of the decisions they seek to reopen. The regulation does not apply to appeals. Moreover, the motion to reopen or reconsider currently before the AAO was timely filed.

Counsel asserts that the regulations are silent as to the processing of an I-290B appeal if it was not properly executed, and that the treatment of improperly executed G-28 forms in 8 C.F.R. § 103.3(a)(2)(v)(A)(2) – allowing additional time for a proper form to be filed whether or not favorable action on the appeal is warranted – should be applied to improperly executed I-290Bs as well. The AAO does not agree. The regulation at 8 C.F.R. § 103.2(a)(1) provides that “[e]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form,” one of which is that the form be signed. A form “which is not properly signed . . . shall be rejected as improperly filed . . . [and] will not retain a filing date.” 8 C.F.R. § 103.2(a)(7). The regulations are clear, therefore, that an appeal form cannot be filed until it is signed. The regulations do not provide a grace period to submit a properly signed I-290B form after the 33-day filing period for an appeal. A properly signed I-290B appeal was not filed in the instant petition until January 9, 2004, which was three days after the 33-day appeal period expired on January 6, 2004.

Thus, counsel has not stated any reasons for reconsideration, supported by precedent decisions, to establish that the AAO's decision was based on an incorrect application of law or policy, as required in a motion to reconsider.

For the reasons discussed above, counsel's submissions do not satisfy the requirements of either a motion to reopen or a motion to reconsider, and do not show proper cause for favorable action by the AAO, in accordance with 8 C.F.R. § 103.5(a)(1)(i). As provided in 8 C.F.R. § 103.5(a)(4): “A motion that does not meet the applicable requirements shall be dismissed.” Accordingly, the petitioner's motion to reopen or reconsider must be dismissed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb its prior decision rejecting the appeal.

**ORDER:** The motion to reopen or reconsider is dismissed. The petition is denied.